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COMMONWEALTH *v.* CITY OF RICHMOND.

March 12, 1914.

[81 S. E. 69.]

1. **Taxation (§ 217*)—Exemption—Municipal Property.**—Where the separate annual receipts from a municipal auditorium, market houses, waterworks, and gasworks were less than the expense incurred in connection with each, when taken together with interest on outstanding indebtedness and on the investment, such property was exempt from taxation under Const. 1902, § 183, subsec. "a" (Code 1904, p. cclxvii), exempting property owned by cities and used wholly and exclusively for city purposes, as against a contention that the city was engaged in competitive business, was furnishing water and gas to consumers for compensation, and that some water and gas had been furnished beyond the city limits.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 355, 356; Dec. Dig. § 217.* 10 Va.-W. Va. Enc. Dig. 222.]

2. **Taxation (§ 196*)—Exemption—Constitutional Provision.**—The provision of Const. 1902, § 183 (Code 1904, p. cclxvii), exempting from taxation property owned by cities and used wholly and exclusively for city purposes, cannot be construed with the same degree of strictness that applies to provisions making exemptions contrary to the policy of the state, since as to such property exemption is the rule and taxation the exception.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 314; Dec. Dig. § 196.* 10 Va.-W. Va. Enc. Dig. 222.]

3. **Taxation (§ 217*)—Exemption—"Wholly"—"Exclusively."**—In Const. 1902, § 183 (Code 1904, p. cclxvii), exempting from taxation property owned by cities and used wholly and exclusively for city purposes, the word "wholly" is used in the same sense as in Code 1887, § 457, as amended (Laws 1895-96, c. 178), which statute is superseded by the constitutional provision, and adds nothing to the completeness or extensiveness of the word "exclusively," since "wholly" is but a synonym of "exclusively," its definition being "to the exclusion of other things;" and hence, where the use made of city property has direct reference to the purposes for which it was authorized to be owned and held, and tends to directly promote such purposes, such use is within the provision exempting the property from taxation, though revenue or profit is derived from it.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 355, 356; Dec. Dig. § 217.* 10 Va.-W. Va. Enc. Dig. 222.]

For other definitions, see Words and Phrases, vol. 8, p. 7451; vol. 3, pp. 2552, 2553.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

4. Taxation (§ 217*)—Exemption—Property Devoted to "Public Use."—The test whether a use is a "public use," within Const. 1902, § 183 (Code 1904, p. cclxvii), exempting from taxation certain property devoted to a public use, is whether a public trust is imposed upon the property, whether the public has a legal right to the use which cannot be gainsaid or denied or withdrawn by the owner.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 355, 356; Dec. Dig. § 217.* 10 Va.-W. Va. Enc. Dig. 222.]

For other definitions, see Words and Phrases, vol. 6, pp. 5825-5837; vol. 8, p. 7774.]

Error to Hustings Court of Richmond.

Action by the Commonwealth against City of Richmond. Judgment for defendant, and the Commonwealth brings error. Affirmed.

The Attorney General, for the Commonwealth.

H. R. Pollard, of Richmond, for defendant in error.

WESTERN UNION TELEGRAPH CO. *v.* WALKER BROS.

March 12, 1914.

[81 S. E. 74.]

1. Telegraphs and Telephones (§ 78*)—Nondelivery of Message—Penalty.—Code 1904, § 1294h, cl. 6, prescribing a penalty for wrongful failure to deliver a telegram, does not require the forwarding of messages by telephone; and hence the penalty therein prescribed could not be imposed for breach of a custom of a local telegraph agent to transmit messages through that medium for the accommodation of an addressee.

[Ed. Note.—For other cases, see Telegraphs and Telephones, Cent. Dig. §§ 79-81; Dec. Dig. § 78.* 13 Va.-W. Va. Enc. Dig. 186; 14 Va.-W. Va. Enc. Dig. 1019.]

2. Telegraphs and Telephones (§ 78*)—Nondelivery of Message—Penalty.—Under Code 1904, § 1294h, cl. 6, prescribing a penalty for wrongful failure to deliver a telegram to an addressee residing within the city limits, or at such point as the regulations of the company may require delivery, the penalty could not be imposed for breach of a custom of a local agent of the company to deliver messages to addressees residing outside the delivery limits.

[Ed. Note.—For other cases, see Telegraphs and Telephones, Cent. Dig. §§ 79-81; Dec. Dig. § 78.* 13 Va.-W. Va. Enc. Dig. 186; 14 Va.-W. Va. Enc. Dig. 1019.]

3. Telegraphs and Telephones (§ 78*)—Nondelivery of Message—Penalty—Construction of Statute.—Code 1904, § 1294h, cl. 6, pre-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.